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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,157	06/30/2005	Son Nguyen-Kim	13111-00023-US	6306
30678 7590 11/28/2007 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20036			EXAMINER PEZZUTO, HELEN LEE	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,157

Applicant(s)

NGUYEN-KIM ET AL.

Examiner

Helen L. Pezzuto

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 10, 17, 19, 21, 23 and 30-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18, 20, 22, 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/19/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-29 and the election of ultimate species in the reply filed on 10/11/07 is acknowledged.
2. Claims 10, 17, 19, 21, 23, and 30-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/11/07.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by

"such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 24 recites the broad recitation "a quaternized monomer containing amine groups", and the claim also recites "quaternized vinylimidazole" which is the narrower statement of the range/limitation.

The recited "preferably" renders claim 24 indefinite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-9, 11-16, 18, 20, 22, and 24-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins (US-841) or Galleguillos et al. (US-768) or Blankenburg et al. (US-074) or Morschhauser et al. (US-476).

US 5,639,841 to Jenkins discloses a polymer useful as thickeners and dispersants for aqueous systems, including cosmetic and pharmaceutical formulations (col. 9, lines 4-17). Prior art polymer is derived from 1-99.8 wt% of one or more nonionic, cationic and/or amphoteric monomers, 0-98.8 wt% of one or more monoethylenically unsaturated monomers, 0.1-98.8 wt% of one or more monoethylenically unsaturated macromonomer, 0-20 wt% of one or more polyethylenically unsaturated crosslinking monomers, and 0-25 wt% of one or more (meth)acrylates of a strong acid (see abstract). Suitable anionic, cationic monomers include (meth)acrylic acid, diethylaminoethyl methacrylate, disclosed within the scope of the instant (a) and (b) monomers. N-vinylpyrrolidone and (meth)acrylamide were disclosed within the scope of the instant amide-group containing compound (c). Hydroxyalkyl (meth)acrylate was taught within the scope of the instant monomer (d), and the instant component (e) and (g) fall within the scope of prior art macromonomer

(C) (col. 2, line 47 to col. 5, line 13). Specifically, patentee teaches that R^3 in the macromonomer of formula (I) can be an organic residue of esters (col. 4, line 52 to col. 5, line 6), thus, encompassing the instant polyether acrylates. Prior art further discloses alkyl (meth)acrylates, within the scope of the additional monomer formula expressed in claims 20 and 22 (col. 3, lines 38-40).

US 6,361,768 to Galleguillos et al. discloses a hydrophilic ampholytic polymer derived from amino and carboxyl functional monomers, nonionic hydrophilic monomers, and hydrophobic monomers, suitably used in cosmetic and pharmaceutical applications (see abstract; col. 4 lines 36-49). Suitable anionic and cationic monomers include (meth)acrylic acid, N-dimethylaminopropylacrylamide, N-dimethylaminomethyl (meth)acrylate, N-vinylimidazole, and diallyl amines (col. 4, line 64 to col. 7, line 16). Suitable hydrophilic monomers include (meth)acrylamide, N-vinylpyrrolidone, hydroxyethyl (meth)acrylate and methoxy polyethylene oxide (meth)acrylate, taught within the scope of the instant (c), (d), (e), and (g) components (col. 7, line 27 to col. 8,

line 21; Tables 1 and 2). The instant additional monomer expressed in claims 20 and 22 fall within the scope or prior art hydrophobic monomers (col. 8, line 66 to col. 10, line 8), The resultant polymer is suitably used in various aqueous cosmetic and pharmaceutical formulations containing conventional additives (col. 18, line 27 to col. 20, line 25).

US 6,403,074 B1 to Blankenburg et al. discloses a water-soluble or water-dispersible polymer produced by polymerizing mixtures of ethylenically unsaturated monomers in the presence of polyalkylene oxide-containing silicone derivatives (see abstract). The preferred ethylenically unsaturated monomers are defined by formula I (col. 2, lines 41-61), including (meth)acrylic acid and its salts, esters and amides, N,N-dialkylaminoalkyl (meth)acrylates and (meth)acrylamides, vinylpyrrolidone, hydroxyalkyl (meth)acrylates, alkylene glycol (meth)acrylates, disclosed within the scope of the monomers expressed in the present claims (col. 2, line 62 to col. 5, line 25). Prior art polymers are taught to have utilities in cosmetic applications (col. 8, lines 30-47).

US 6,645,476 B1 to Morschhauser et al. discloses water-soluble polymers and their use in cosmetic and pharmaceutical compositions (see abstract). Specifically, prior art polymer is prepared by polymerizing one or more polyalkylene oxide-containing macromonomer, and one or more ethylenically unsaturated monomers (col. 2, lines 17-50). Suitable ethylenically unsaturated monomers include (meth)acrylic acid, AMPS, esters of (meth)acrylic acid, N-vinylpyrrolidone, (meth)acryloylpropyltrimethyl ammonium chloride, discloses within the scope of the instant monomers. The instant polyether acrylate is taught within prior art macromonomer (col. 2, lines 29-50; col. 3, lines 36-62).

Accordingly, it would have been obvious to one having ordinary skill in the art to select and use the various monomers as suggested by the prior art references to formulate an ampholytic copolymer, motivated by the reasonable expectation of success of their utility in cosmetic and pharmaceutical compositions as taught. Thus, rendering obvious the present claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L.

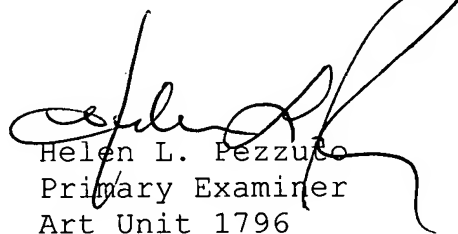
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Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Helen L. Pezzuto
Primary Examiner
Art Unit 1796

hlp